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OFFICE OF PETITIONS

In re Application of :
Ricky McCorkle : DECISION ON PETITION
Application No. 10/671,852 :
Filed: September 26, 2003 :
Atty Docket No. 198/1 :

This is a decision on the "PETITION TO THE COMMISSIONER TO
WITHDRAW HOLDING OF ABANDONMENT," filed August 8, 2005
(certificate of mailing dated August 5, 2005).

The petition under § 1.181 is **GRANTED**.

The above-identified application became abandoned as a result of petitioner's failure to timely file a response to the non-final Office action mailed November 17, 2004. This Office action set a three-month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). No reply having been made of record in the application and no extension of time obtained, the application became abandoned on February 18, 2005. A Notice of Abandonment was mailed on June 3, 2005.

In response, petitioner filed the instant petition (with a certificate of mailing dated August 5, 2005, a Wednesday). Preliminarily, petitioner is reminded that pursuant to 1.181(f), a petition to withdraw holding of abandonment filed more than 2 months after the mailing of the notice of abandonment may be dismissed as untimely filed without consideration on the merits. In this instance, the Director shall exercise his discretion in favor of petitioner and consider this matter on the merits.

Petitioner asserts that the applicant did file a Response to the Office letter, and in a timely fashion prior to the statutory deadline of May 17, 2005. Petitioner states that the Response was submitted on February 17, 2005. In support thereof, petitioner submits copies of the reply and the return-postcard receipt.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See MPEP 503. A review of applicant's postcard reveals that it specifically itemizes as being filed a Response to Office Action dated November 17, 2004. It lacks notation of non-receipt of any item denoted. It bears a date-stamp of receipt of February 22, 2005.

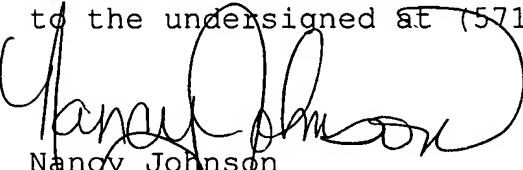
In addition, a review of the Response reveals that it bears a proper certificate of mailing under 37 C.F.R. § 1.8(a), executed by Kristen Salgado and certifying timely mailing on February 17, 2005¹. Considering the evidence, it is concluded that petitioner has shown that a reply should be considered timely filed.

Accordingly, withdrawal of the holding of abandonment pursuant to § 1.8(b) is warranted.

In view thereof, a response is considered timely filed, the Notice of Abandonment is hereby VACATED, and the holding of abandoned is hereby WITHDRAWN.

Technology Center AU 3724 has been advised of this decision. The application file is, thereby, forwarded to Technology Center 3724 for consideration of the Reply resubmitted on petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

¹ It is noted that the Response included the wrong application number. However, the remaining identifying information was correct.